

Reply Comments to FCC, docket number 13-86

From: Decency Enforcement Center for Television (“Decent TV”)

By Thomas North, President

Date: July 15, 2013

These Reply Comments supplement Decent TV’s original public comments filed in this docket on May 13, 2013, which were shown by the FCC’s ECFS to have been received by the agency that date.

Primarily, our Reply Comments are in response to public comments filed by Fox Television Group, Inc. and Fox Television Holdings, Inc. (jointly). We have reviewed those comments, and, in their entirety – sentence by sentence, word by word - they in essence run exactly, diametrically, and polar opposite to the decision of the U.S. Supreme Court just last year. That Supreme Court case is the same discussed in our original comments, *FCC v Fox Television Stations, Inc. and ABC, Inc., et al*, Supreme Court docket no. 10-1293 (as reported in volume 567 of the U.S. Supreme Court reports). Although the Supreme Court correctly decided in favor of Fox and ABC as to the specific broadcast TV programs at issue, on the basis of a notice technicality, Fox (and all the other major U.S. television networks) lost the case as to the overarching constitutional issues they had illegally raised and argued in the case. To the extent their recent decision is most relevant to this proceeding, the Supreme Court refused to even address or consider the very same arguments that Fox now has repackaged as public comments to this agency!!! And now Fox is nonsensically making those comments to the same agency that prevailed over it in that Court on those arguments!

For example, on page 1 of its comments, Fox urges the Commission to conclude “that it is legally bound, and logically bound, to cease attempting to enforce broadcast decency limits once and for all.” Based on what? Certainly not the law! There are not words in the English language to fully characterize or describe that comment in light of the Supreme Court decision against Fox on the same points. But let’s try – “unconstitutional”, “illegal”, “ridiculous”, “insane”, “ludicrous”, “irrational”, “illogical”, “nonsensical”, “audacious”, “ill conceived”, “groundless”,

“frivolous”, “delusional”, “worthless”, “meritless”, “senseless”, “absurd”.....

Alas, it’s no use! While ALL of those words accurately describe Fox’s comments in part, none of them come close to fully describing their comments. There, however, is a *phrase* to most accurately describe the comments, and the actions of Fox’s executives and attorneys in submitting the same - “childishly, oppositionally defiant.”

What is happening here is that Fox, after losing to the FCC in the Supreme Court on the same issues, is coming to the FCC, its court adversary, and filing comments that it (FCC) is “legally bound” to act as if it had lost the case, and Fox had won! Let’s add the words “twisted”, “perverted”, and “backwards” to the above descriptive list!

Further, also in 2012, the U.S. Supreme Court, in declining the FCC’s Petition for Writ of Certiorari in the case of FCC v CBS, Inc., nevertheless ruled by majority vote that the broadcasters are now permanently on notice that the FCC’s CURRENT indecency regulations are valid and enforceable - just the contrary of what Fox tries to argue now!

If filing such comments is the action Fox takes when it lost its Supreme Court case, under current FCC policy, it is very easy to imagine just how **completely** out of control Fox’s executives, and many other broadcasters, would become if the FCC’s indecency policy were relaxed in the least. In fact, the comments by Fox are the best possible evidence to SUPPORT the accuracy of OUR original comments - that it is critically necessary that the current regulations remain in place.

Fox has proven 100% of the time in all of the indecency court cases, not to mention its broadcasting actions, that it utterly refuses to ever comply with ANY law or rule, substantive or procedural. Its comments here further attest to their illegal intent. Fox and its executives are basically criminals who are telling the government that it cannot enforce any laws against them. It’s that simple.

On page 2, Fox references “The Supreme Court’s directive in *Fox II*....”. The problem with that comment is, there is no “directive” in *Fox II* from the Supreme Court. That comment is a fiction and a fantasy only.

Further on the same page, Fox comments, “Given the wild fluctuations and contortions that have characterized FCC indecency enforcement efforts, whatever complaints remain pending cannot possibly form the basis for any indecency enforcement proceeding.” But that comment itself is based on a unsupported and wildly speculative assumption that every single one of the over 400,000 complaints the FCC says it still has pending pertain to broadcasts that emanated PRIOR to the adoption of the Golden Glove policy. The Fox, ABC, and CBS cases in the Supreme Court ONLY involved broadcasts that aired prior to that policy being adopted, and that was the only basis on which the Court dismissed the FCC findings. Most likely, all complaints with that same notice problem are among the over one million already dismissed by the Commission on April 1, 2013, and the remaining complaints do not have that legal infirmity, rendering Fox’s comment senseless.

Fox, on page 4, entitles a comment, “A. The Entire Constitutional Construct for Indecency Oversight Rests Previously on the Outdated and Narrowly Decided, *Pacifica* case”.

Wrong! The Constitutional Construct now ALSO rests on *Fox II*, ABC, and CBS cases of 2012, in which, again, the Supreme Court declined to even consider all the comments Fox is now rehashing. Fox, its executives, and attorneys need to “get a life” and “move on” – in conformity with the current law and FCC regulations that constitutionally govern their chosen field of work. As we successfully argued to the Supreme Court, “Fox, the television network, seeks to guard the henhouse, and without any accountability or consequences when it slaughters all of the hens.”

The rest of Fox’s comments are not even worthy of a reply, as without any substance. We all know Foxes are clever and wily animals, but even they cannot do an end run around or “trump” a U.S. Supreme Court decision against them. More critically, neither can the FCC!!

As for comments filed by other networks (than Fox), the following are ALL similarly contrary and opposite to the law, as confirmed by the Supreme Court:

1. That broadcast media is no longer “uniquely pervasive” – (FCC argued to the contrary in court and the Supreme Court refused to consider this network argument, that is factually false anyway),
2. That indecency enforcement violates the Constitution – the main argument refused by the Supreme Court, per arguments to the contrary by FCC and our organization,
3. Reliance on the “V-chip” – an argument refused by the Supreme Court, and argued against by the FCC in court, for many reasons, including the V-chip’s reliance in turn on ratings assigned by the networks themselves, who mis-rate programs over 68% of the time (per the court record), due to financial incentives in advertising,
4. And finally, the mindless mantra - that those who object can turn the channel or turn off the TV/radio – refused by the Supreme Court and expressly rejected in *Pacifica*, and also argued against by the FCC in court, for many legal and factual reasons. (As if only those who choose to see other persons, who are complete strangers to them, fully nude should dare to ever be able to turn on a television they have purchased, or go to any public or other place where a television is on!!!)

Finally, we note that:

A) again, the proposed policy is most arbitrary and capricious, failing to even define “egregious”, which would will be jumped on by broadcasters and courts,

B) the FCC has received about 130,000 comments on this docket, about 260 times more than on ANY previous public proceeding in its history, and comments opposed to the proposal outnumbered those in favor by about **1,000 to one**. (Issuing a notice for public comments is not just an exercise in jumping through a constitutional due process hoop, and cannot just be a “dog and pony show” in order to say, “see, we did that.” Due process is only afforded pursuant to law if the comments are given great weight substantively, and

C) the results of the comment period are consistent with the polls taken on broadcast indecency, which Morality in Media did a great job of compiling and placing into this record in its public comments, and with which we concur. We also concur with all comments filed by Parents Television Council.

In closing, the three areas that dictate what the Commission does as a result of this public proceeding are, in order of priority, 1) the law, which, as we have pointed out, UNANIMOUSLY mandates against the proposed policy change, by statute and Supreme Court decision, 2) the facts, which also ALL dictate against the proposal, and which include the excellent arguments FCC made to the Supreme Court as well as the record of polling results, and 3) public opinion, as determined by the comments received by the Commission, which shows the public opposed to this proposal by a 1,000 to 1 margin. The FCC's legal duty is to the citizens of America in accordance with all of the above, not to any broadcaster who is privileged to use the public's airwaves only with consent and on the terms legislated by the citizens.